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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,558	03/29/2004	Yoshio Ishii	04110/0201116-US0	4103
7278 7590 04/25/2008 DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770				
EXAMINER WEINSTEIN, LEONARD J				
ART UNIT 3746		PAPER NUMBER		
MAIL DATE 04/25/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/813,558

Applicant(s)

ISHII ET AL.

Examiner

LEONARD J. WEINSTEIN

Art Unit

3746

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: For (a) claim 5; For (d) claims 8-9. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 3-5, 7.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

/Devon C Kramer/
Supervisory Patent Examiner, Art Unit 3683

/Leonard J Weinstein/
Examiner, Art Unit 3746

Continuation of 13. Other:

1. This office action is in response to the amendment of April 2, 2008. In making the below advisory action the examiner has considered and addressed each of the applicant's arguments.
2. The examiner notes that an amendment to independent claim 5 has been made. The additional limitations provides limitations that were not previously disclosed with respect to claim 7 and would require further consideration and/or search.
3. Applicant's arguments filed April 2, 2008 have been fully considered but they are not persuasive. With respect to the rejection of claims 1 and 3 under 35 U.S.C. 102(b) as being anticipated by Elson et al. US 5,466,229, the applicant argues, with regards to claim 1, that Elson fails to teach an air introduction device inserted into a vacuum exhaust path and which connects a vacuum vessel and a vacuum pump. The applicant argues, with regards to claim 3, that Elson fails to teach a separating preventing short tube that fixes a circulation resistance within a tube.
4. In response to applicant's argument that Elson fails to teach an air introduction device inserted into a vacuum exhaust path and which connects a vacuum vessel and a vacuum pump, the examiner disagrees. Elson teaches an air introduction device 98 permits a flow of air into a vessel when a piston 88 is moved away from the vessel 12. In this instance element 71 becomes the first segment of a vacuum pump exhaust path which continues through a vessel to a port formed in element 140, then into a direct pump line in element 130, and finally discharged through a direct pump line, element 162. It is further noted that the movement of element 88 which allows a vessel 12 to dispense a fluid therein, and the introduction of air through introduction device 98 act to reduce a level of fluid in the vessel 12 and concurrently a degrees of vacuum within element 12. The introduction of fluid above a fluid level increases a pressure above the fluid within the vessel. If prior to moving piston 88, a float had reached the position shown in figure 9a, a communication port 146a between a vessel 12 and vacuum pump 14 would be closed. Permitting and venting, via element 98, a discharge of fluid aids in more rapidly lowering a fluid level and putting the vessel 12 in communication with a vacuum pump 14. Further since element 88 is moved preferably during an operation of the pump it can continuously introduce a controlled amount of air into the vacuum exhaust path as discussed above. It is noted that the limitations are sufficiently broad to encompass any and all components that contribute to a communication between a vessel and vacuum pump as claimed. Further limitations do not set forth a concrete structural limitation that defines the type of connection made.
5. In response to applicant's argument that Elson does not teach a separating preventing short tube that fixes a circulation resistance within a tube, the examiner disagrees. The threaded element 74 was identified by the examiner as being analogous to a shortening tube that fixes a circulation resistance to flow a gas through a "constant circulation resistance tube," identified by the examiner to be taught by element 68 of Elson. The examiner notes two conditions for consideration in response to applicant's argument. The first state being the tube 68 being tube disposed in an "open" state with piston 88 fully extended as shown in figure 5b, and connected to element 56 of a vessel. In this state the resistance to flow would be subject to the degree of vacuum created within vessel by vacuum pump 14. This cannot be considered fixed as the degree of vacuum changes as level of fluid varies. However in a second state in which the tube was disposed in an "open" state with piston 88 fully extended as shown in figure 5b, and was not connected to element 56 of a vessel, then resistance to circulation would be "fixed" by the ambient pressure surrounding the tube. This state is made possible by changing the position, i.e. unscrewing, the shortening tube identified by the examiner to be element 74 of Elson. Therefore given the broadest reasonable interpretation Elson teaches the limitations of a separating preventing short tube that fixes a circulation resistance within a tube as claimed.